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CHARLES ELMORE

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No. ~~555~~ 95

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

FIRST NATIONAL PICTURES, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION BY THE UNITED STATES TO ADVANCE

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No. 856

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MOTION BY THE UNITED STATES TO ADVANCE

The Attorney General pursuant to Rule 20, paragraph 6, of this Court moves to advance the above-entitled case for a hearing as near the 27th day of October, 1930, during the next term of Court, as may be convenient and immediately after the companion case of *Paramount Famous Lasky Corporation* v. *United States,* No. 820, October Term, 1929. A motion to advance the latter case is being submitted to this Court simultaneously with this motion.

This is a suit in equity by the United States under the Act of July 2, 1890 (26 Stat. 209), known

as the Sherman Antitrust Act. The defendants named are ten corporations engaged in the distribution of motion-picture films to theatre owners throughout the United States, the Motion Picture Producers and Distributors of America, Inc., a New York membership corporation having a Class B membership composed of the defendant distributors, and the thirty-two Film Boards of Trade maintained by the defendant distributors and other distributors of motion-picture films in the thirty-two principal cities of the United States. The petition alleges that the defendants are engaged in a combination and conspiracy in restraint of interstate trade and commerce in motion-picture films.

The petition alleges, among other things, that—

1. The defendant distributors distribute approximately sixty per cent of the motion-picture films distributed annually in the United States, and the membership of each defendant Film Board of Trade represents practically every distributor of motion-picture films in the territory in which the Board operates. The members of the defendant Film Boards of Trade distribute approximately ninety-eight per cent of the motion-picture films distributed annually in the United States, and it is impossible for any motion-picture theatre to secure motion-picture films for its regular operation without dealing with one or more members of the particular Film Board of Trade in the territory in which said theatre is located.

2. The defendant distributors have caused each Film Board of Trade to adopt rules for the establishment and operations of a Credit Committee consisting of three members appointed by the Board. These rules require the reporting of all sales and transfers of motion-picture theatres and of the uncompleted exhibition contracts of the former owners of such theatres. They prohibit contracts for the exhibition of motion pictures, except spot booking, with the new owners of theatres which the Credit Committee finds were sold or transferred to avoid existing contracts unless such new owner pays in cash on each new contract the amount, not exceeding $1,000, determined by the Credit Committee and designated by it as "cash security."

3. There were understandings and agreements among members of the defendant Film Boards which exceeded and supplemented the rules for the establishment and operations of Credit Committees and which had for their purpose compelling each new owner of a theatre sold or transferred to assume all the uncompleted exhibition contracts of the former owner.

The District Court found that the purpose of requiring deposits on contracts with new owners of old theatres was to induce the new owners to assume and perform the contracts of the former owners, that the rules have generally been employed as the basis for negotiations with a view to the fair adjustment of the interests of all concerned, that

the defendants' agreement to demand security was fully justified by their common interest in preserving the integrity of contractual obligations owing to them by others, and that such restraints as may have resulted therefrom were incidental to this legitimate purpose, and therefore not unreasonable or unlawful.

The District Court on December 23, 1929, entered a final decree dismissing the petition. The petition of the United States for an appeal to this Court was allowed February 21, 1930.

An early decision by this Court upon this appeal is of general public interest:

(1) Because this Court has not heretofore determined the legality of collective action by members of an industry to compel prospective customers who acquire the business of former customers to assume the latter's contractual obligations whenever an agency of the industry determines that the business was sold or transferred to avoid existing contracts;

(2) Because final determination of the issues herein will affect the rights and interests of many of the purchasers and transferees of the several thousand motion-picture theatres annually sold or transferred in the United States.

Opposing counsel concur in the motion that the case be advanced.

WILLIAM D. MITCHELL,
Attorney General.

MAY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930